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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

A.B.,

Plaintiff,

v.

**Dr. JASON CAMPBELL and
OREGON HEALTH &
SCIENCE UNIVERSITY,**

Defendants.

Case No 3:21-cv-00311-HZ

**DEFENDANT OHSU’S
OPPOSITION TO PLAINTIFF’S
MOTION FOR PROTECTIVE
ORDER**

Defendant Oregon Health & Science University (“OHSU”) opposes plaintiff’s motion for a protective order to apply to information exchanged as part of initial disclosures (ECF No. 5-1). OHSU does not object in principle to a protective order, but believes it is too early in the litigation to determine the scope of such an order. This opposition is supported by the legal memorandum set forth below and the pleadings on file herein.

FACTUAL BACKGROUND

This is a tort action. Plaintiff alleges personal injury claims against defendant Campbell

and vicarious liability claims against OHSU for: (1) sexual assault, (2) battery, (3) intentional infliction of emotional distress, and (4) invasion of privacy. She also brings a direct negligence claim against OHSU. This lawsuit was filed on February 26, 2021 (ECF No. 1), and served on March 1, 2021 (ECF No. 3-1). Initial disclosures pursuant to F.R.C.P. 26 have not yet been exchanged and no discovery requests yet issued.

LEGAL ARGUMENT

The Court may “for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense” by, among other things, “forbidding the disclosure” of discovery material. F.R.C.P. 26(c)(1). The burden for establishing the need for a protective order for materials produced in discovery falls on the party seeking the order. *Id.*; *San Jose Mercury News, Inc. v. United States Dist. Court*, 187 F.3d 1096, 1103 (9th Cir. 1999); *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975) (describing it as a “heavy burden”).

A. Plaintiff Has Not Established a Specific Need.

Protective orders are generally disfavored, so the need for a protective order must be justified based on specific, articulable facts. *Valley Broadcasting Co. v. United States Dist. Court*, 798 F.2d 1289, 1294 (9th Cir. 1986); *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210–1211 (9th Cir. 2002) (the party seeking protection “bears the burden of showing specific prejudice or harm will result if no protective order is granted”). This is because, as a general rule, the public is permitted “access to litigation documents and information produced during discovery.” *Phillips*, 307 F.3d at 1210–1211; *San Jose Mercury News*, 187 F.3d at 1103 (material produced in pretrial discovery is “presumptively public”).

Here plaintiff asserts that a protective order is necessary because the parties expect to exchange documents that “*may likely contain* sensitive and confidential personal information, scandalous materials, and explicit content” (ECF No. 5-1, p. 2) (emphasis added). The possibility that documents exchanged in discovery *may* contain sensitive or confidential information falls short of the showing required. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test). Plaintiff has provided no specific examples, nor articulated how disclosure of any information the parties may exchange in discovery will result in specific prejudice or harm.

The proposed protective order is too broad and lacks the requisite specificity. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003) (noting that “blanket” protective orders are overly inclusive by nature, and that a party seeking protection via such an order does not typically satisfy the “good cause” showing requirement). Plaintiff asserts that the parties expect to exchange “information related to plaintiff’s allegations of OHSU’s pattern and practice, in addition to various aspects of complaints of sexual harassment and discrimination” (ECF No. 5-1, p. 2). Putting aside the fact that there is no “pattern and practice” claim available under Oregon common law and plaintiff does not plead such a theory of recovery in any event, plaintiff fails to explain what specific information she will be producing that requires protection and why it requires protection.

B. It is Too Early in the Discovery Process to Determine the Need for a Protective Order.

As discussed above, the parties have not exchanged initial disclosures. Plaintiff has not indicated that she will be producing any information that is traditionally subject to protective

orders—trade secret information, personnel files and/or medical records. Given this and the lack of specificity about which documents plaintiff believes should be subject to the protective order and the basis for need, it is premature for such an order to be entered.

CONCLUSION

For the above-stated reasons, the Court should deny plaintiff's motion for a protective order.

DATED this 16th day of March, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2021, I served the foregoing
**DEFENDANT OHSU'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR
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by electronic means through the Court's Case Management/Electronic Case File system.

/s/ Karen O'Kasey

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